

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

UNITED STATES OF AMERICA

V.

CRIMINAL NO. 5:19-cr3-DCB-LRA

BORIS WARD

GOVERNMENT’S RESPONSE
TO DEFENDANT’S MOTION FOR PRODUCTION OF
EVIDENCE PURSUANT TO FEDERAL RULE OF EVIDENCE 404(B)

The United States of America (hereinafter, “the Government”) respectfully submits this response to defendant Boris Wards’ (hereinafter, “the defendant”) motion (*see* Docket No. 24) requesting this Court to enter an order directing the Government: to provide reasonable, pretrial notice of its intent to use other crimes, wrongs, or bad acts pursuant to Fed. R. Evid. 404(b); to provide “all other material requested in Defendant’s Motion for Discovery and Inspection” filed in this case; and to provide notice of any evidence the Government intends to rely upon to impeach the defendant pursuant to Fed. R. Evid. 609.

The requests made in the defendant’s motion are either (a) already called for under the discovery order entered in this case; or (b) otherwise subject to existing discovery obligations or rules, and as a result of which should be denied:

1. A trial in this case was set to commence during the July 8, 2019, term of Court by an order continuing the trial date from May 6, 2019. *See* Docket No. 22. The defendant filed his motion for production of Rule 404(b) evidence on June 25, 2019. *See*

Docket No. 24.

2. The discovery order (*see* Docket No. 16) filed in this case states that the Government shall provide to the defendant 404(b) evidence at least five calendar days prior to trial. *See* Docket No. 16. At the time the defendant filed his motion for production of Rule 404(b) evidence, thirteen calendar days remained until the beginning of the trial term.

3. The trial has since been continued to September 23, 2019, by an order agreed upon between the Government and the defendant, filed on July 1, 2019. *See* Docket No. 31. Therefore, as of the date of the filing of this response, the Government has approximately seventy-nine days until trial begins.

4. Items 1 through 4 of the defendant's motion are covered by ¶ 1(b) of the discovery order, and governed by Fed. R. Evid. 404(b) and Fed. R. Cr. P. 16. Should the Government determine to use any such evidence in its case in chief, the Government will fulfill its obligations pursuant to these authorities.

5. Items 5 through 7 of the defendant's motion are statements and appear to not require a reply from the Government.

6. Item 8 of the defendant's motion requests that the Government be ordered to produce material that was requested in "Defendant's Motion for Discovery filed in this case ..." No such motion has been filed by the defendant in this case. The Government has complied with its obligations pursuant to Fed. R. Evid. 16 and ¶ 1(a) of the discovery order, but recognizes its obligation to produce discovery is of a continuing nature and will supplement its discovery if it obtains any additional material.

7. Item 9 of the defendant's motion is governed by Fed. R. Evid. 609 and the Government will provide the defendant with reasonable notice of any prior convictions, regardless of the age of the conviction, it intends to use for impeachment.

For the foregoing reasons, the Government respectfully requests that the Court deny the defendant's motion for production of evidence pursuant to Fed. R. Evid. 404(b) in its entirety.

Respectfully Submitted,

D. MICHAEL HURST, JR.
United States Attorney

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CERTIFICATE OF SERVICE

I, Herbert S. Carraway, hereby certify that I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to all parties of record.

This the 5th day of July, 2019.

/s/ Herbert S. Carraway
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